

RESERVED

A.F.R.

Court No. - 33

Case :- WRIT - C No. - 19079 of 2022

Petitioner :- Bhurangi and another

Respondent :- State of U.P. and others

Counsel for Petitioner :- Vineet Kumar Singh

Counsel for Respondent :- C.S.C., Avinash Chandra Srivastava, Pranjali Singh, Rishabh Srivastava

Hon'ble J.J. Munir,J.

Heard Mr. Vineet Kumar Singh, learned Counsel for the petitioners and Mr. Abhishek Shukla, learned Counsel appearing on behalf of respondent Nos. 1 to 5. No one appears on behalf of respondent No. 6. Mr. Ramendra Kumar Yadav, Advocate holding brief of Mr. Rishabh Srivastava, learned Counsel for respondent No. 7, is present.

2. This writ petition has been instituted, praying that a writ of *mandamus* be issued, commanding the respondents to restore the petitioners' possession in Plot No. 53, admeasuring 100 square yards each, being two plots of the same size situate at Village Alinagar Kenjra, Tehsil Sadar, District Firozabad, of which they are the lawful allottees *vide* an *awasiya patta* dated 04.02.1976 granted in favour of the petitioners' predecessors-in-interest.

3. It is common ground between parties that the first petitioner's father, Ramji Lal and the second petitioner's father, Keshav Dayal, were both granted an *awasiya patta* each by the Land Management Committee, Gram Panchayat Alinagar Kenjra, District Firozabad on 04.02.1976, both residential plots being located in Plot No. 53. Each plot measured 100 square yards. A photostat copy each of the two *awasiya patta* in Z.A. Form 49-D drawn up in accordance with Rule 115L of the Uttar Pradesh

Zamindari Abolition and Land Reform Rules, 1952¹ are annexed as part of Annexure-1 to the writ petition.

4. Apart from the petitioners' predecessors-in-interest, 136 other residents of the village were also granted residential *patta* of an identical area, all comprised in Plot No. 53. All the *patta* numbering a total of 138, including that granted to the petitioners' predecessors, came to be approved by the competent authority. The petitioners predecessors were put in possession of their respective residential plots. The validity of the *awasiya patta* granted in favour of the petitioners' predecessors as well as the other 136 similarly circumstanced *patta* holders was questioned through proceedings initiated under Rule 115P of the Rules of 1952 at the instance of the State. The case was registered as Case No. 26 of 1982-83. Show-cause notices were issued to the petitioners' predecessors under Rule 115P aforesaid, and 84 allottees entered appearance to contest those proceedings. The petitioners' predecessors, like the others who contested, put in their objections and defended the allotments. After hearing parties and going through the record, the Additional Collector (Administration) Ferozabad passed an order dated 25.07.1985, discharging the notices issued to the petitioners' predecessors as also all other similarly circumstanced allottees, who were granted a residential *patta* on 04.02.1976. The Additional Collector recorded a finding to the effect that the allottees have deposited a sum of money equal to 40 times the land revenue payable and raised constructions on the land allotted to each of them. He declined to disturb the allotment, including those made in favour of the petitioners' predecessors.

5. Aggrieved by orders of the Additional Collector dated 27.05.1985, the State of U.P. preferred Revision No. 425 of 1984-85 under Section 333A of the Uttar Pradesh Zamindari Abolition and Land Reforms Act,

¹ 'the Rules of 1952' for short

1950² to the Commissioner, Agra Division, Agra. The Additional Commissioner, before whom the revision came up, made a reference to the Board of Revenue that the order dated 25.07.1985 passed by the Additional Collector be set aside. This order was made by the Additional Commissioner on 30.07.1986. The reference was numbered as Reference No. 66 of 1986-87 on the file of the Board of Revenue, U.P. at Allahabad. The Member, Board of Revenue *vide* judgment and order dated 19.09.1985, rejected the reference made by the Additional Commissioner, set aside his order dated 06.07.1986 and remanded the revision to the Additional Commissioner for decision afresh. Revision No. 425 of 1984-85 came up before the Additional Commissioner, Agra Division, Agra, who held it to be not maintainable and rejected the same *vide* order dated 05.03.1998. Therefore, according to the petitioners, the orders of the Additional Collector dated 25.07.1985, and that of the Additional Commissioner dated 05.03.1998 attained finality, since these were not put to any further challenge at the instance of the respondents before any other higher court of competent jurisdiction. The order of the Board also seems not to have been challenged. The petitioners say that they came to be dispossessed from the plots in dispute without following the due process of law by the respondent-Authorities, which is an *ultra vires* act.

6. The petitioners represented their grievance to the Additional Collector, Firozabad on 20.11.2017, with a prayer to restrain the Authorities from interfering with their possession and restore it back to them, bearing in mind the orders dated 25.07.1985 and 05.03.1998. A similar representation dated 09.06.2021 was made by the petitioners to the Additional District Magistrate (Finance & Revenue), Firozabad, with a prayer to restore them back to possession, and further, restrain the other respondents from raising any constructions over the petitioners' residential plots. The Additional District Magistrate (Finance & Revenue) passed an

2 'the Act of 1950' for short

order dated 11.06.2021, directing the Tehsildar/Naib Tehsildar, Sadar Chauri Chaura, Raja Talab to demarcate the petitioners' land, in the event the petitioners' allotment has not been set aside, and further, to remove illegal occupant, if any, therefrom.

7. A representation was also made on behalf of the Manager, Committee of Management, Sri Hubb Lal Balika Vidyalaya, Alinagar Kenjra, Firozabad to the Sub-Divisional Officer, Tehsil Sadar, Firozabad on 22.07.2021, apprising him of the fact that the plots of land allotted to the petitioners and other similarly circumstanced natives for their *abadi* have been unlawfully taken away and requested him to restrain the other Authorities concerned from unlawfully exercising powers to the prejudice of the allottees. It was further prayed that in the alternative, the land that belonged to the Institution, and subsequently, reserved for *abadi*, be returned to them. It is the petitioners' case that Plot No. 53 admeasuring 13 *biswa* was earlier allotted to the Janta Balika Vidyalaya, Alinagar Kenjra, Firozabad (now known as Sri Hubb Lal Balia Vidyalaya). It was directed to be reserved for the purpose of *abadi* by an order of the Sub-Divisional Officer dated 29.01.1976 passed in Case No. 3 of 1975-96, Roshan Lal v. Bhumi Prabandh Samiti, Alinagar, Kenjra. The Sub-Divisional Officer, Sadar, Firozabad issued a notice dated 16.08.2021 to the predecessors of the petitioner, the Manager of the Institution last mentioned, the Pradhan of Gram Panchayat, Alinagar Kenjra and the Gram Panchayat Secretary, Alinagar, Kenjra to appear before him on 19.07.2021 along with evidence, so that the dispute can be resolved. The petitioners went on to place their grievance before the District Magistrate, Firozabad with a prayer to protect lawful possession of their respective residential plots.

8. The grievance of the petitioners further is that despite all these proceedings and their settled rights, which show that their *awasiya patta* have not been cancelled, and rather, their rights enlarged, with deposit of

40 times the land revenue, their possession has not been restored. They continue to be illegally deprived of their roof and shelter by the respondents. It is further said that the constructions raised over the petitioners' plots by their predecessors have been demolished by the respondent-Authorities, acting in connivance with the Pradhan, Gram Panchayat, Alinagar Kenjra, utilizing brute force of the State available at their command, in utter derogation of the petitioners' rights.

9. When this petition came up before this Court, by a detailed order dated 22.07.2022, after noticing all relevant facts, it was admitted to hearing and notice issued to respondent Nos. 1 to 5, all Authorities of the State, amongst whom, the District Magistrate, Firozabad, the Sub-Divisional Officer, Tehsil Sadar, Firozabad and the Tehsildar, Sadar, Firozabad were ordered to file their personal affidavits, explaining the circumstances under which the petitioners were dispossessed and their constructions demolished. *Vide* an interim order passed on the stay application, the respondents were restrained from raising constructions over the plots in dispute, or changing the character and nature of the property.

10. In response to the Rule issued, three personal affidavits were filed, one on behalf of the Collector, Firozabad, respondent No. 2, the second, on behalf of the Sub-Divisional Officer, Tehsil Sadar, Firozabad, respondent No. 4 and the third, on behalf of respondent No. 5, that is to say, the Tehsildar, Tehsil Sadar, District Firozabad. To each of these affidavits, the petitioners have filed three replies, all dated 24.09.2022. All the three personal affidavits are dated 29.08.2022. All these affidavits take an identical stand, and therefore, it would suffice to refer to one of these and reply thereto to the extent necessary.

11. This Court has looked into the personal affidavit of Ravi Ranjan, District Magistrate, Firozabad. In paragraph Nos. 3, 4, 5 & 6 of the said affidavit, it is averred :

3. That it is respectfully submitted that over the land in dispute the Community Toilet had been constructed in the year 2017. However, the boundary wall has been constructed in the month of August, 2021 over the land in dispute by the Gram Panchayat of the concerned Village.

4. That after passing the order dated 22.07.2022 passed by this Hon'ble Court, the deponent along with the respondent no. 4 and 5 inquired about the matter and as such it has been found that the residential patta granted in favour of the petitioners on 04.02.1976 has been maintained by order dated 25.07.1985 passed by (then) Additional District Magistrate, Firozabad which became final between the parties concerned.

5. That it appears that the aforesaid construction of the community toilet and the boundary wall, over the land in dispute, was done without taking notice of the order dated 25.07.1985 passed by (then) Additional District Magistrate, District Firozabad in a proceeding under section 115P of the U.P. ZA&LR Act and Rules which became final between the parties concerned.

6. That, now, in such a situation, as stated above, the deponent respectfully submits with his folded hand that he will comply the order passed by this Hon'ble Court, if any, in respect of the possession of the petitioners, however, the previous action taken by the authorities concerned against the petitioners is highly regretted.

12. In paragraph Nos. 4, 5, 6 and 7 of the petitioners' reply to paragraph Nos. 3, 4, 5 and 6 of the personal affidavit filed by the District Magistrate, it is averred :

4. That in reply to the averments made in paragraph No.3 of the affidavit, it is submitted that the boundary wall and community toilet have been illegally constructed over the land in dispute upon forcibly dispossessing the petitioners therefrom, particularly when, the rights of the petitioners over the land in dispute stand perfected by virtue of the orders of the Additional Collector (Administration) Firozabad dated 25.07.1985 and that of the Additional Commissioner,

Agra Division, Agra dated 05.09.1998 which have already attained finality.

5. That in reply to the averments made in paragraph No.4 of the affidavit, it is submitted that the petitioners have been prejudiced due to the arbitrary and illegal exercise of the power by the respondent No.6 at whose instance, the petitioners came to be forcibly dispossessed of the property in dispute in connivance with the respondent authorities concerned. It is a settled proposition of law that a person must not be dispossessed of his property without following the due process of law but in the instant case, the act of the respondents concerned in forcibly dispossessing the petitioners of the disputed plot is clearly violative of Article 300-A of the Constitution of India.

6. That in reply to the averments made in paragraph No.5 of the affidavit, it is submitted that the petitioners have sustained hardship and there has been a complete failure of justice in forcibly divesting the petitioners of the property in dispute despite the orders of the Revenue Authorities dated 25.07.1985 and 05.03.1998 operating in their favour and, as such, the possession of the petitioners over the land in dispute is liable to be restored forthwith on the strength of the Avasiya Patta dated 04.02.1976 granted in favour of their predecessors-in-interest which is still subsisting.

7. That in reply to the averments made in paragraph Nos.6 and 7 of the affidavit, it is submitted that a suitable direction may be issued by this Hon'ble Court upon the respondent authorities to restore the possession of the petitioners over the disputed plot forthwith considering the orders dated 25.07.1985 and 05.03.1998 passed by the Additional Collector (Administration), Firozabad and Additional Commissioner, Agra Division, Agra respectively which have attained finality with respect to the subject matter of dispute as also the Avasiya Patta dated 04.02.1976 which is still operative.

13. From a bare perusal of the stand taken by the respondent-Authorities, it is evident that respondent Nos. 2, 4 and 5 admit the fact that a community toilet has been constructed over the plots in dispute belonging to the petitioners in the year 2017 and a boundary wall constructed in August, 2021 by the Gram Panchayat. It is also admitted that the residential *patta* granted in favour of the petitioners on 04.02.1976

has been affirmed by the then Additional Collector, Firozabad *vide* order dated 25.07.1985. It has been wholesomely acknowledged that the construction of the community toilet and the boundary wall over the land in dispute was done without taking notice of the order dated 25.07.1985 passed by the Additional Collector, Firozabad in proceedings under Section 115P of the Rules of 1952, that had become final *inter partes*. The respondents have undertaken to comply with orders, if any, that this Court may make with regard to possession of the petitioners' land and have regretted action taken by the Authorities concerned in the past relating to the land in dispute. This is the stand which the District Magistrate, the Sub-Divisional Officer and the Tehsildar have unanimously taken.

14. The petitioners, on the other hand, in their reply, have said that their dispossession was done without following the due process of law and in violation of their crystallized rights, which is a blatant transgression of their fundamental rights. We think that it is undoubtedly so. The act of the respondents in forcibly dispossessing the petitioners of the land in dispute, lawfully held under *awasiya patta* granted in favour of their predecessors, and as respondent Nos. 2, 4 and 5 unanimously say, without taking note of the earlier orders upholding the said *patta*, is decidedly a brazen abuse of authority by the respondents in derogation of the petitioners' right not only under Article 300-A of the Constitution, but also their Right to Shelter protected under Article 19(1)(e) and 21 of the Constitution. To take away a man's roof and shelter otherwise than by procedure established by law is an act that cannot be lightly noticed by this Court and passed over.

15. Right to Shelter was well acknowledged as a fundamental right in **Chameli Singh and others v. State of U.P. and another**³. It was observed by their Lordships of the Supreme Court in **Chameli Devi** (*supra*):

8. In any organised society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all

3 (1996) 2 SCC 459

facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to live guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilised society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights. Shelter for a human being, therefore, is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being. Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right. As is enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens, of course subject to its economic budgeting. In a democratic society as a member of the organised civic community one should have permanent shelter so as to physically, mentally and intellectually equip oneself to improve his excellence as a useful citizen as enjoined in the Fundamental Duties and to be a useful citizen and equal participant in democracy. The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a cultured being. Want of decent residence, therefore, frustrates the very object of the constitutional animation of right to equality, economic justice, fundamental right to residence, dignity of person and right to live itself. To bring the Dalits and Tribes into the mainstream of national life, providing these facilities and opportunities to them is the duty of the State as fundamental to their basic human and constitutional rights.

9. In *Kurra Subba Rao v. Distt. Collector* [(1984) 3 APLJ 249] , Andhra Pradesh High Court considering the obligation of the State to provide shelter to the weaker sections of the society by acquiring lands for public purpose and distribution thereof had held that in all stages of social development a man must have some property or capacity for acquiring property.

There could be no individual liberty without a minimum of property. People who cannot buy bread cannot follow the suggestion that they can eat cake. People bowed under the weight of poverty are unlikely to stand up for their constitutional rights. Welfare State exists not only to enable the people to eke out their livelihood but also to make it possible for them to lead a good life.

10. The need to provide right to shelter is not peculiar to India alone but is a global problem being faced by all the developing and developed nations. In 1980 the United Nations General Assembly in its Resolution No. 35/76 expressed the view that an international year devoted to the problems of homeless people in urban and rural areas of the developing countries could be an appropriate occasion to focus attention of the international community on those problems. In Resolution No. 37/221 of 1987 the International Year of Shelter for the Homeless was adopted and request was made to member States to sustain the momentum generated during the programme for the year and to continue implementing concrete and innovative activities aimed at improving the shelter and neighbourhoods of the poor and the disadvantaged and requested the Secretary-General of the UNO to keep it informed periodically of the progress achieved. At the close of the international year the General Assembly received and noted in Resolution No. 42/191 the reports of the Executive Director of the U.N. Centre for Human Settlement entitled "Shelter and services for the poor – a call to action". It recognised that adequate and secure shelter is a basic human right and is vital for the fulfilment of human aspirations and that a squalid residential environment is a constant threat to health and to life itself, thereby constituting a drain on human resources, a nation's most valuable asset. The General Assembly expressed deep concern about the existing situation in which, in spite of efforts of Government at the national and local levels and of international organisations, more than one billion people find themselves either completely without shelter or living in homes unfit for human habitation; and that owing to prevailing demographic trends, the already formidable problems will escalate in the coming years unless concerted and determined efforts are taken immediately.

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12. In *Encyclopaedia of Social Work in India* (Vol. 2) at p. 82 it is stated that supply of housing in India does not fully meet the present needs of the population whether in terms of location, size, tenure,

type or facilitation. The share of housing sector in India's economy is fluctuating from year to year. Of the total housing stock of 7.44 crore dwelling units available in 1971 in rural areas, 0.80 crore were unserviceable kutcha, 2.44 crores were serviceable kutcha, 2.79 crores were semi-pucca and only 1.41 crore units were pucca. The housing accommodation as a whole in the rural areas as dwelling units is inadequate. With ever-growing population and migration of poor to urban areas for livelihood, slums are getting escalated and resultantly with the passage of time housing problem is becoming increasingly acute. Under Minimum Needs Programme provision of house sites and construction of houses for rural landless poor was envisaged in the Sixth Plan 1980-85 which continued in the Seventh Plan. Finances are provided for construction of the houses under the planned expenditure.

16. The same thought was echoed once again by the Supreme Court in **New Riviera Coop. Housing Society and another v. Special Land Acquisition Officer and others**⁴ where it was observed :

7. The appellant herein filed a writ petition contending that the acquisition is violative of Article 21 of the Constitution violating his dignity of person, and deprives his right to shelter and also makes him shelterless. He referred to various steps taken by him to have his title to the flat established. It is not necessary to dilate upon all the details in that behalf. Suffice it to state that as on the date of the notification, he was the owner of Flat No. 27. The question is whether the acquisition offends Article 21.

8. Three decisions of this Court have been cited by the learned counsel for the appellant to which reference is unnecessary for the reason that in none of the cases the question of validity of acquisition by the State exercising its power of eminent domain was put in issue on the anvil of Article 21. All those cases relate to providing alternative sites. Right to shelter is undoubtedly a fundamental right. A person may be rendered shelterless, but it may be to serve a larger public purpose. Far from saying that he will be rendered shelterless this Court did not circumscribe the State's power of eminent domain, even though a person whose land is being acquired compulsorily for the public purpose is rendered shelterless. If that contention is given credence no land can be acquired under the Act for any public purpose since in all such

4 (1996) 1 SCC 731

cases the owner/interested person would be deprived of his property. He is deprived of it according to law. Since the owner is unwilling for the acquisition of his property for public purpose, Section 23(2) provides solatium for compulsory acquisition against his wishes. Under those circumstances, it cannot be held that the acquisition for public purpose violates Article 21 of the Constitution or the right to livelihood or right to shelter or dignity of person.

(emphasis by Court)

17. Since the decisions rendered by the Supreme Court in **Chameli Singh** and **New Riviera Coop. Housing Society** (*supra*), much events have gone by in the march of history, and the country has seen unprecedented action by the State to provide housing to the poor and the marginalised section of the society, particularly, in the rural areas. Homes have been provided to the homeless under schemes such as the Pradhanmantri Awas Yojna - Urban (for the urban poor) since the year 2015 and the Pradhanmantri Awas Yojna - Gramin (for the rural poor), since the year 2016.

18. In the above conspectus, to deprive the petitioners of their roof and shelter, who, apparently, belong to the marginalised sections of the rural populace is certainly a violation of their fundamental right to shelter. It is not a case, where, their shelter has been taken away by a lawful act of the State, in furtherance of a larger public interest.

19. In the decisions aforementioned, the Right to Shelter, as a facet of the fundamental rights guaranteed under Articles 19(1)(e) and 21 of the Constitution, was acknowledged, but the Court was judging the validity of action by the State to acquire land for a public purpose, in exercise of its power of eminent domain. Therefore, the remarks in the decisions of their Lordships that uphold deprivation of possession, and, *a fortiori*, shelter in those cases came in the wake of action taken in lawful exercise of power by the State, protected by the Statute to accomplish a wider public purpose. This is a case where, admittedly, the petitioners have been

dispossessed by acknowledged blunder, if not downright remissness and negligence by the respondent-Authorities in the exercise of their public functions. They have employed powers available to them and the might of the State to unlawfully deprive the petitioners of their roof and shelter, which they now admit before this Court was on account of not noting earlier orders passed by the Additional Collector and the Additional Commissioner. The respondents also acknowledge that they have constructed public toilets over a part of the land in dispute, to which they had no right, whatsoever, under the law. They have also acknowledged that the petitioners' right under the *awasiya patta* is a subsisting right.

20. In the circumstances, the petitioners are entitled to restoration of their residential plots, after immediate demolition of the public toilets and boundary walls put up on their land by the Gram Sabha. They are also entitled to award of exemplary costs to serve as recompense for the brazen violation of their rights that we have found.

21. In the circumstances, this writ petition **succeeds** and shall stand **allowed**. The respondents, that is to say, the Collector/District Magistrate, Firozabad, the Sub-Divisional Officer, Tehsil Sadar, District Firozabad, the Tehsildar, Tehsil Sadar, District Firozabad and the Land Management Committee, Gram Panchayat, Alinagar, Kenjra, Block and District Firozabad, represented by its Pradhan, are commanded by a *mandamus* to ensure removal of all constructions, be it public toilets or boundary walls or any other construction standing on the petitioners' residential plots and deliver vacant possession of the same to the petitioners, **on or before 30.12.2023**. Respondent Nos. 2, 4, 5 and 6 shall pay **costs in the sum of ₹2,00,000/- (Rupees Two Lacs Only)** each to the two petitioners by depositing the said sum of money in the Court of the learned Civil Judge (Senior Division) Firozabad, on or before, 30.12.2023. Upon deposit of costs, the learned Civil Judge shall immediately remit the same in account to the two petitioners. It will be open to the State Government to recover

the costs personally from the officials concerned, who may be found responsible for the petitioners' unlawful dispossession.

22. The Registrar (Compliance) is directed to communicate this order to the Collector and District Magistrate, Firozabad, the Sub-Divisional Officer, Tehsil Sadar, District Firozabad, the Tehsildar, Tehsil Sadar, District Firozabad and the Pradhan, Gram Panchayat, Alinagar, Kenjra, Block and District Firozabad, through the learned Civil Judge (Senior Division), Firozabad and to the learned Civil Judge (Senior Division) Firozabad.

Order Date :- November 28, 2023

I. Batabyal

(J.J. Munir, J.)